BORA LASKIN LAW LIBRARY
3 1761 03323 7942

Economic Integration: Lessons From the European Community

Prof: W. C. Graham

Volume II

1991 - 92

rage

BORA LASKIN LAW LIBRARY
OCT 7 1991
FACULTY OF LAW
UNIVERSITY OF TORONTO

UNIVERSITY OF TORONTO

Economic Integration: Lessons From the European Community

Prof: W. C. Graham

Volume II

1991 - 92

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/economicintegrat02grah_0

TABLE OF CONTENTS

PART I - INTRODUCTION TO EUROPE 1992

i) Jacques Delors' address to the European Parliament: "Commission's Programme for 1990", (Strasbourg: January 17, February 13). 1

ii) "Doing Business in Europe: Towards 1992" CCH International. 3

iii) J. Thieffry, P. van Doorn, and S. Lowe, "The Single European Market", (1989) 12 Boston College International and Comparative Law Review 357, excerpted at p. 362. 9

PART II - FREE MOVEMENT OF GOODS

A. INTRODUCTION

1. **European Community**

i) EEC Treaty (Rome), Articles 12, 16, 30 - 36, 95 19

ii) P. S. R. F. Mathijsen, A Guide to European Community Law, 5th ed. (London: Sweet & Maxwell, 1990) at 126 - 137. 21

2. **Canada-US Free Trade Agreement**

i) Canada-US Free Trade Agreement: Chapters 4, 5, 12 24

ii) Michael Hart, "Trade in Goods and the Canada-US Trade Agreement." 30

B. CASELAW/COMMENTARIES

a) Scope of the rights conferred by the Treaty

1. European Community

i) Sociaal Fonds v. Brachfield & Sons, [1969] CMLR 315 35

ii) Procureur Du Roi v. Dassonville, [1974] 2 CMLR 436 37

iii) Re Imports of Cyprus Potatoes: E.C. Commission v. Ireland, [1985] 3 CMLR 152. 41

b) Origin of Goods

1. European Community

i) Council Regulation No. 802/68, Articles 5, 6. 45

ii) "Origin", The CCH Guide to 1993: Changes in EEC Law. 46

iii) Brother International GmbH v. Hauptzollamt Giessen, (Case 26/88) 47

iv) Paulette Vander Schueren, Case Comment on Brother in (1990) 27 C. M. L. Rev. 341, excerpted at 347. 52

2. Canada-US Free Trade Agreement

i) Canada-US Free Trade Agreement, Chap. 3 54

ii) "Canadian Sugar Refiners Voice Opposition to US Customs Tariff Change on Sweetener", 6 Int'l Trade Rep. (BNA) 176, Feb. 8, 1989. 60

iii) "When is a Truck?", Washington Post, Feb. 22, 1989, p. A16, col 1. 60

iv) K. Romain and C. MacKenzie, "Honda faces heavy duty on Civics exported to U.S.", The Globe & Mail, June 18, 1991, p. B1, col 1. 61

c) Standards and Consumer Protection

1. European Community

i) "Protectionism in The Community: Standards and Product Testing", EC - US Business Report, Jan. 1, 1990. 62

ii) "Standards: New Legislation Seeks to Change EC Standards Policy", EC - US Business Report, May 1, 1990. 64

iii) Rewe-Zentral AG v. Bundesmonopolvewaltung fur Brantwein, [1979] 3 CMLR 494. 65

iv) CCH Comment, Re Commission v. Federal Republic of Germany (Germany Beer Standards Case) (Case 178/84), CCH para. 10,866. 70

v) Re Bouchara, nee Wurmser & Anor (Case 25/88). 73

vi) Council Directive 85/374/EEC on Liability for Defective Products, July 25, 1985. 76

2. Canada - US Free Trade Agreement

i) Canada - US Free Trade Agreement, Chap. 6. 77

d) Trade Marks

1. European Community

i) S.A. CNL-SUCAL NV v. HAG GF AG (Case C-10/89) [1990] 3 C. M. L. R. 571. 81

ii) "Intellectual Property", The CCH Guide to 1993: Changes in EEC Law. 93

iii) Proposed Council Regulation for a Community Trademark. 95

2. Canada - US Free Trade Agreement

i) "Fed. Crt. enjoins sale of imported `grey market' ketchup", Lawyers Weekly, May 7, 1991. 96

e) Anti-dumping and Countervailing Duties

1. European Community

i) William C. Graham, Note on Anti-trust, Trade Law, State Aids, Dumping and Subsidies in the E.C. 97

ii) Philip Morris Holland BV v. E.C. Commission, (Case 730/79) [1981] 2 CMLR 321. 100

2. Canada - US Free Trade Agreement

a) Introduction

i) William C. Graham, Note on Dumping and Subsidization under the FTA. 105

b) The Regime of Chapter 19

i) Canada - US Free Trade Agreement, Chapter 19. 106

ii) Dispute Settlement Final AD/CVD Orders (Chart). 119

iii) William C. Graham, "Dispute Resolution in the Canada/US Free Trade Agreement: One Part of a Complex Relationship", presented at the Union Internationale des Avocats meeting in Mexico City, July 1991. 121

Part III - FREE MOVEMENT OF PERSONS AND THE RIGHT OF ESTABLISHMENT

A. FREE MOVEMENT AND THE RIGHT OF ESTABLISHMENT OF INDIVIDUALS

1. European Community

a) Introduction

i) EEC Treaty (Rome), Articles 48 - 58. 127

ii) George Ress, Thirty Years of Community Law, (1983). 130

iii) Bryan Harris, "Freedom to Provide Professional Services", 139 New Law Jo. 138

b) Scope of the Rights Conferred by the Treaty

i) Reyners v. The Belgian State (Case 2/74), [1974] 2 CMLR 305. 142

ii) Thieffry v. Conseil de L'Ordre des Avocats a la Cour de Paris [1977] 2 CMLR 373. 146

c) The Nature of the Right - Direct Applicability

i) The State (The Netherlands) v. Federatie Nederlandse Vakbeweging (Dutch Trades Union Federation) [1987] 3 CMLR 767. 149

d) Definitions of the Right in Directives and Exceptions Thereto

i) The State v. Jean Noel Royer [1976] 2 CMLR 619. 153

ii) The Republic v. Concetta Sagulo et al. [1977] 2 CMLR 585. 159

iii) Roland Rutili v. Minister of the Interior [1976] 1 CMLR 140. 163

iv) Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen (Case 14/83)
Dorit Harz v. Deutsche Tradax GmbH (Case 79/83)
[1986] 2 CMLR 430. 168

e) Limits on the Right - Horizontal Direct Applicability of Directives

i) Rolls Royce plc v. Doughty, (unreported). 177

ii) Foster v. British Gas plc, (Case C-188/89). 178

f) The Right of Establishment of Professionals

i) Vincent Auer v. Ministere Public (No. 2)[1985] 1 CMLR 123. 185

ii) Council Directive, Mar. 22, 1977: Re Lawyers. 194

iii) Claude Gullung v. Conseil de L'Ordre des Avocats [1988] 2 CMLR 57. 196

iv) Emir Gul v. Regierungsprasident Dusseldorf [1987] 1 CMLR 501. 202

g) Social Europe

i) "Basic Community Social Rights/Action Program", Business Guide to E.C. Initiatives (Spring 1990). 203

ii) Bryan Harris, "`Social Charter': the Legal Basis" (1989) 139 New Law Jo.764. 204

iii) Single European Act, Article 21. 204

iv) "Employment and Social Policy", Single European Market Reporter - Baker & McKenzie. 206

v) Council Directive Safeguarding Employees' Rights in the Event of Transfers of Undertakings, Businesses, or Parts of Businesses, Feb. 14, 1977. 208

vi) Litster v. Forth Dry Dock & Engineering Co. Ltd. [1989] 2 CMLR 194. 211

2. Canada - US Free Trade Agreement

a) Introduction and Commentary

i) Canada - US Free Trade Agreement, Chap. 15. 213

ii) Government of Canada, "Service, Investment, and Temporary Entry", The Canada - US Free Trade Agreement: Synopsis, 10 Dec. 1987, pp 40 - 48. 215

B. FREE MOVEMENT AND THE RIGHT OF ESTABLISHMENT OF COMPANIES

1. European Community

i) Wachter et al., Harmonization of Company and Securities Law: The European and American Approach. 216

ii) Brebner & Co., Setting Up a Company in the European Community: A Country by Country Guide, (Pheonix: The Oryx Press, 1989) Introduction. 218

iii) Werner F. Ebke, "The Limited Partnership and Transnational Combinations of Business Forms: `Delaware Syndrome" Versus European Community Law, (1988) 22 Int'l Lawyer, 191. 220

iv) Regina v. H.M. Treasury and Commissioners of Inland Revenue *ex parte* Daily Mail and General Trust plc [1988] 3 CMLR 713. 225

v) "European Company Statute", Business Guide To EC Initiatives (Spring 1990). 233

PART IV - FREE MOVEMENT OF SERVICES AND CAPITAL

A. FREE MOVEMENT OF SERVICES

1. European Community

a) Introduction

i) EEC Treaty (Rome), Articles 59 - 66. 234

ii) "Services Covered: Article 60", CCH International: Common Market Reporter. 235

ii) J. A. Usher, "Financial Services in EEC Law" (1988) 37 Int'l and Comparative Law Quarterly. 238

iv) "Financial Services", The CCH Guide to 1993: Changes in EEC Law. 244

b) Caselaw

i) Re Insurance Services: E.C. Commission v. Germany, (Case 205/84) [1987] 2 CMLR 69. 250

2. Canada - US Free Trade Agreement

a) Introduction

i) Canada - US Free Trade Agreement, Chapters 14, and 17. 259

ii) Government of Canada, "Service, Investment, and Temporary Entry", The Canada - US Free Trade Agreement: Synopsis, 10 Dec. 1987, pp 40 - 48. 272

b) Commentary

i) William C. Graham, Comments on Services under the Can/US FTA. 275

ii) William C. Graham, Comments on Financial Services under the Can/US FTA. 280

iii) Marc Lalonde, "Trade in Financial Services Under the Canada - US Free Trade Agreement: A Canadian Perspective". 282

B. FREE MOVEMENT OF CAPITAL AND INVESTMENT

1. European Community

i) EEC Treaty (Rome), Articles 67 - 73, 106. 289

ii) Guerrino Casati (Case 203/80) [1982] 1 CMLR 365. 290

iii) "Movement of Capital: Article 67", CCH International, Common Market Reporter. 297

iv) "Transactions Affected by Exchange Controls", Baker & MacKenzie: Single European Market Reporter. 302

v) "Monetary Union", Baker & MacKenzie: Single European Market Reporter. 306

2. Canada - US Free Trade Agreement

i) Canada - US Free Trade Agreement, Chapter 16. 309

ii) Government of Canada, "Service, Investment, and Temporary Entry", The Canada - US Free Trade Agreement: Synopsis, 10 Dec. 1987, pp 40 - 48. 324

iii) William C. Graham, Comments on Chap. 16 of the FTA. 326